

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03 .2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.124 OF 2001

M/s.United India Insurance Company Ltd.,  
123, Usman Road, T.Nagar,  
Chennai 600 017.

... Appellant/ IV Opposite  
Party

Vs.

1. Anjalai
2. Muthiyalu @ Muthal
3. The Chairman,  
Tamilnadu Electricity Board,  
Anna Salai, Chennai 600 002.

4. The Divisional Engineer,  
Office of the Divisional Engineer,  
Tamilnadu Electricity Board,  
207, Purasaiwalkam High Road,  
Chennai 600 006.

5. Mr.Venkateswara  
3, Neelanth Garden, II Street,  
Perambur, Chennai 600 011.

... Respondents/ Applicant  
1 and 2 and Opposite  
Party 1 to 3

Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, against the award dated 01.02.2000 made in W.C.No.179 of 1997 on the file of the Commissioner for Workmen Compensation - II, Chennai.

For Appellant : Mr.J.M.Venkataraman

For Respondents: Mr.G.Rajasekaran for R1 and R2  
Mr.N.Muthusamy for R3 and R4  
Mr.V.Padmanabhan for R5

## J U D G M E N T

Aggrieved by the award dated 01.02.2000 passed by the Commissioner for Workmen Compensation - II, Chennai in W.C.No.179 of 1997, the Insurance Company has preferred this appeal.

2. The brief facts leading to the filing of this appeal are as follows:

(i) Respondents 1 and 2 are the parents of the deceased, M.Ponraj. They are the claimants before the Commissioner for Workmen Compensation. The deceased was a contract labourer engaged by various Electricity Board Contractors and others, who have taken contract with the Tamil Nadu Electricity Board from 1988. On 06.04.1996, the Tamil Nadu Electricity Board Official, Mr.Devaraj attached to Kolathur Section sent the deceased with other two workers, namely, Baskaran and Raman, under the leadership of one Raju, Maistry to rectify the cable fault at Door No.38, Bharathiar Street, Lakshmipuram, Chennai 600 099. The said Baskaran removed all the four feeder fuses of the said street and kept the same in the safe custody of Mr.Devaraj, Foreman. Subsequently, the deceased on instructions from the Foreman, climbed the electricity post for connecting the cable to the post. Suddenly, there was electric supply, as a result of which, Ponraj was thrown out of the electric post and died due to electrocution.

(ii) According to the claimants, the deceased Ponraj was a contract labourer, earning Rs.2,500/- per month. The claimants further contended that the first opposite party, namely, the Chairman of the Tamilnadu Electricity Board, Chennai by letter dated 18.05.1996 instructed them to file a claim petition. The second opposite party is the Divisional Engineer of the area, in which the deceased Ponraj was employed at the time of accident. The third opposite party is the area contractor for Tamilnadu Electricity Board, under whom the deceased was employed. Respondents 1 and 2/claimants, claimed compensation of Rs.3,00,000/- from the above said opposite parties.

(iii) The Chairman, Tamilnadu Electricity Board and the Divisional Engineer, Chennai/opposite parties 1 and 2 have filed a counter affidavit, denying the averments made in the claim petition. They further stated that the deceased was employed only by the contractor/third opposite party, as per the agreement entered into between the contractor and opposite parties 1 and 2 and therefore, the contractor alone is liable to pay compensation.

(iv) The contractor/third opposite party has filed a counter affidavit, denying his liability to pay compensation. According to him, the deceased, Ponraj was a piece-rate contract labourer, doing the works enumerated in Schedule 10 of the K2 Agreement entered into

between the contractor and the Tamilnadu Electricity Board. It is also stated in the counter affidavit that there were several contractors and the workers will work for other contractors, if there is need.

It is admitted by the third opposite party in the counter affidavit that on 06.04.1996, the deceased Ponraj was entrusted with the job of cable laying work at Door No.38, Bharathiar Street, Lakshmipuram, Chennai 600 099 and after completion of the contract work, the deceased Ponraj was instructed to attend the connection work by the Tamilnadu Electricity Board Official, Mr.Devaraj, who was working as a Foreman at the time of accident. After the removal of four fuses, the cable laying work was carried out in the presence of Mr.Devaraj and unfortunately, Ponraj was electrocuted. He fell down and succumbed to injuries and died later.

According to the contractor/third opposite party, the deceased died only due to electrocution, when he was instructed by the Foreman, Mr.Devaraj to provide service connection to the premises at No.38, Bharathiar Street, Lakshmipuram, Chennai 600 099 and not while doing the work of the contractor, namely, cable laying and excavation work. The deceased died only when he was carrying out the instructions of the Electricity Board, employer and therefore, he is not liable to pay compensation. He further submitted that only the Tamilnadu Electricity Board is liable to pay compensation.

(v) During the pendency of the claim petition before the Commissioner of Workmen Compensation, M/s.United India Insurance Company Limited was impleaded as the fourth opposite party by the Contractor, stating that he had insured his labourers with the United India Insurance Company Limited for the period between 19.10.1995 and 18.10.1996 under the Workmen Compensation policy, vide Policy No.011400/41/01/1643/95. He further submitted in his impleading application that he had misplaced the Insurance Policy and sought impleading of the Insurance Company.

(vi) The appellant, namely, the United India Insurance Company in the counter affidavit stated that they are not necessary party to the claim proceedings and hence prayed for its dismissal. They also submitted that they have not received any claim form or wage particulars from the third opposite party, namely, the Contractor in connection with the death of Ponraj. They also submitted that the deceased was not covered under the Policy for the period between 19.10.1995 and 18.10.1996. They submitted that the opposite parties 1 and 2/Tamil Nadu Electricity Board are liable to pay compensation for the death of Ponraj.

(vii) On behalf of claimants, the mother of the deceased was examined as A.W.1. One B.Sivakabilan, Co-worker was examined as A.W.2. On behalf of claimants, Exs.A1 to A7 were marked. R.Venkateswaran, Contractor was examined as R.W.1 and Exs.R1 to R3 were marked on his behalf.

(viii) The Commissioner for Workmen Compensation on evaluation of pleadings and evidence came to the conclusion that the deceased was a contract labourer, doing work for Tamilnadu Electricity Board and he died in an accident which occurred on 06.04.1996, arising out of and in the course of employment. The said authority held that since the third opposite party had taken Insurance Policy for his labourers under Ex.R2-Insurance Policy, the Insurance Company is liable to indemnify the Contractor and Tamilnadu Electricity Board for the liability to pay compensation. Aggrieved by the finding that the Insurance Company is liable to indemnify the Contractor as well as the Electricity Board, the Insurance Company has filed this appeal.

3. Heard Mr.J.M.Venkataraman, learned Counsel appearing for the appellant, Mr.G.Rajasekaran, learned Counsel appearing for respondents 1 and 2, Mr.N.Muthusamy, learned Counsel appearing for respondents 3 and 4 and Mr.V.Padmanabhan, learned Counsel appearing for the fifth respondent.

4. Mr.J.M.Venkataraman, learned Counsel for the appellant submitted that the Commissioner for Workmen Compensation has failed to note that the third opposite party, M/s.Venkateswara, Contractor has taken a Policy on 19.10.1995 with the appellant Company seeking coverage only for 6 labourers, specifically engaged in laying HT/LT cables and the deceased is not covered under the group of persons covered on 19.10.1995, since the Policy covers only permanent employees. The deceased was engaged in the employment only in the month of April 1996.

He further submitted that laying of HT/LT cables and allied works of the Contractor does not include supply of service connection to any residence, that the contract is restricted only to the purpose for which it is given and the accident had occurred when the deceased was executing the instructions of the Tamilnadu Electricity Board Official, Mr.Devaraj, Foreman.

Learned Counsel for the appellant also brought to the notice of this Court that the averments made by respondents 1 and 2 /claimants in the petition before the authority is to the effect that on 06.04.1996, the Electricity Board Official, Mr.Devaraj attached to Kolathur Section, instructed the deceased to climb the electricity post for connecting the cable to the post and at that time, he got electrocuted and died later.

Learned Counsel also invited the attention of this Court to the deposition of A.W.1 and A.W.2, who have stated that on 06.04.1996, the deceased was asked to climb the electric post to give service connection to Door No.38, Bharathiar Street, Lakshmipuram, Chennai 600 099, as per the instructions of the Foreman, Mr.Devaraj and he died due to electrocution.

Placing reliance on the decisions reported in Oriental Insurance Co. Ltd. vs. Sony Cheriyan (AIR 1999 SC 3252) and United India Insurance Co. Ltd., vs. Harchand Rai Chandan Lal (2005 ACJ 570), learned Counsel for the appellant submitted that the risk could be covered, only if it is specifically covered in the Policy and that it cannot be extended to cover jobs directed by the employees of the Electricity Board. He submitted that the Insurance Company is bound only by the terms and conditions of the contract and that the Company can be fastened with the liability, only if the labourers sustained injury or death, arising out of and in the course of employment as per the contractual terms. Learned Counsel submitted that laying of LT/HT cables and allied works as per the agreement does not include supply of electricity to residence. Therefore, he submitted that the Insurance Company cannot be fastened with the liability contrary to the contract.

5. Mr.N.Muthusamy, learned Counsel for the Electricity Board submitted that the cable laying work includes laying of cables through pole and connecting the same to the metre board. He submitted that on the fateful day of accident, all precautionary measures were taken to remove the fuses of the said line and inspite of that, the deceased was electrocuted due to sudden electric supply. He further submitted that the deceased was not asked by the Tamilnadu Electricity Board Official to effect service connection.

Learned Counsel for the Electricity Board further submitted that the nature of job is covered under the K2 agreement entered into between the Tamilnadu Electricity Board and its Contractor, namely, the third opposite party and as per the agreement, the Contractor is liable to pay compensation for the electrocution of the deceased and that the Insurance Company has to indemnify both the Contractor as well as the Tamil Nadu Electricity Board.

Learned Counsel also submitted that the Insurance Company has not taken up the plea that the nature of work was not covered under the Policy and that no evidence was let in and they should not be permitted to raise the said plea in the appeal.

Inviting my attention to the averments made in the counter affidavit filed by the Insurance Company, learned Counsel for the Electricity Board submitted that the Insurance Company has admitted joint liability to pay compensation. In fine, he submitted that it is the Insurance Company, which is liable to pay compensation to indemnify the Contractor, under whom the deceased was employed as a contract labourer at the time of accident.

6. Mr.G.Rajasekaran, learned Counsel for the claimants submitted that the deceased was employed by the third opposite party on 06.04.1996 and that they are entitled to compensation for the death of their son. He submitted that the deceased Ponraj was working with the Tamilnadu Electricity Board from 1988 onwards as a contract labourer, under various contractors. On 06.04.1996, he was working as a contract labourer with the third opposite party/contractor and he died due to electrocution. Therefore, learned Counsel submitted that the claimants, who have lost their son have to be compensated under the Workmen Compensation Act.

7. A perusal of the terms and conditions of the contract, namely, K2 Agreement entered into between the parties, namely, Tamil Nadu Electricity Board and the Contractor would disclose the type of work to be executed by the contract labourer. Schedule VIII of the said agreement is extracted hereunder :

"SCHEDULE VIII : HT CABLE FAULT WORKS 11 KV (ALL SIZES)  
ITEMS:

(i) Excavating trial pits in all kind of soil for locating HT fault and back filling the pit and consolidating properly.

(ii) Excavating cable trench in all kinds of soil including digging of concrete surface and breaking of masonry structure if any.

(iii) Retrieval of H.T. cable including removal of cement troughs stone-ware pipe or G.I. Pipe as the case may be and transport of cable to stores by departmental vehicle.

(iv) Laying of H.T. Cable in the trench

(This includes laying of cement troughs, stone-ware pipe or G.I. pipes wherever necessary and of surplus cable to stores by Departmental vehicle)

(v) Back filling the trench with excavated earth ramming and consolidating properly in 150 mm layers and top brought in line with the existing surface."

8. The indemnity bond executed on 14.02.1996 by the third opposite party, Contractor is to the effect that the Contractor would absolve the Tamilnadu Electricity Board and its representatives from all the liabilities arising out of the contract, in respect of piece work of HT/LT cables for the period between 19.12.1995 and 31.10.1996, including the compensation payable to the workers employed by M/s.Venkateswara, Contractor as per the Workmen Compensation Act and also against the damages caused to other departmental materials, such as PT cables, street light cables of the Madras Corporation, etc.

The Insurance Policy, Ex.R2, dated 19.10.1995 also specifies the purpose for which the contract is executed and the number of persons covered under the Policy. The coverage under Ex.R2 is only to indemnify the persons working under the contract, namely, carrying out the terms of contract, namely, laying of HT/LT cables and allied works.

9. In *Oriental Insurance Co. Ltd. vs. Sony Cheriyan* reported in AIR 1999 SC 3252, the Supreme Court in paragraph 15 has held as follows :

"15. The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of the liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured also has to act strictly in accordance with the statutory limitations or terms of the policy expressed as set out therein."

In *United India Insurance Co. Ltd., vs. Harchand Rai Chandan Lal* reported in 2005 ACJ 570, the Supreme Court considered the claim for compensation made against the Company for theft. The Policy was taken for burglary/house break. The Insurance Company repudiated the claim on the ground that no burglary took place by use of force or violence. The Apex Court in paragraph 6 of the judgment has held as follows :

"6. ... The definition given in the policy is binding on both the parties. The policy is a contract between the parties and both parties are bound by the terms of contract. As per the definition of the word burglary, followed with violence makes it clear that if any theft is committed it should necessarily precede with violence, i.e., entry into the premises for committing

theft should involve force or violence or threat to insured or to his employees or to the members of his family. Therefore, the element of force and violence is a condition precedent for burglary and housebreaking. The term 'burglary' as defined in the English Dictionary means and illegal entry into the building with an intent to commit crime such as theft. But in absence of violence or force the insured cannot claim indemnification against the insurance company. Terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended. ..."

The above decisions of the Supreme Court clearly lay down the law that the insured can be indemnified only to the extent of the risk covered by the Insurance Policy.

10. In the instant case, K2 agreement entered into between the Electricity Board and the Contractor, third opposite party is only to lay HT/LT cables and not to provide service connection. Therefore, the risk covered under Ex.R2-Insurance Policy is specific and it cannot be extended to the jobs directed to be performed by the officials of the Tamilnadu Electricity Board. The Apex Court in unambiguous terms have laid down the law, that the Insurance Policy between the insurer and the insured represents a contract between the parties. The terms of the agreement have to be strictly construed to determine the extent of liability and that the insured cannot claim anything more than the contract. Nothing can be added or subtracted from the terms of the Policy.

11. In the light of the settled principles of law, the contention raised by the learned Counsel for respondents 3 and 4/Electricity Board that the contract work includes laying of cable in the ground and providing service connection is liable to be rejected. Consequently, the Insurance Company cannot be fastened with the liability to indemnify the Contractor or the Electricity Board, which would tantamount to adding the work of providing service connection, a part of the contract, which is covered under the Policy. Even if the Insurance Company has not raised the plea that the nature of work was not covered under the Policy, still it is open to the Insurance Company to plead at the appellate stage that their liability to pay compensation is only when the accident arises in the course of employment, with reference to the terms of the agreement. It is trite law that substantial questions of law can be raised at the appellate stage. Therefore, the submission of the Counsel for the Electricity Board to the contra is rejected.

12. It is the specific case of the claimants that the official of the Tamilnadu Electricity Board, namely, Mr.Devaraj, Foreman had directed the deceased to climb the post for connecting cable to the post. R.W.1, third opposite party has also deposed that the accident took place only when the deceased was giving connection for supply of electricity at No.38, Bharathiar Street, Lakshmipuram, Chennai 600 099.

13. From the overall analysis of the pleadings and evidence let in by the claimants, it is clear that the death had occurred due to electrocution, when the deceased executed the work ordered by the official of the Electricity Board and it is outside the scope of the K2 Agreement. The finding of the Tribunal fastening the liability on the Insurance Company is erroneous and it is liable to be set aside. Therefore, the appellant is hereby absolved of their liability to pay compensation to the claimants.

14. The deceased was employed as a contract labourer by the third opposite party/contractor by virtue of the agreement and the death has taken place during the course of employment. There is also evidence to show that he had been employed from 1988 onwards, continuously by the contractors. In such circumstances, the third opposite party/contractor and respondents 1 and 2/Electricity Board are liable to compensate the claimants.

The Civil Miscellaneous Appeal is disposed of with the above direction. No costs.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Commissioner for  
Workmen Compensation - II, Chennai.

- 1 cc to Mr.K.S. Narashimhan, Advocate, Sr. 17445
- 1 cc to Mr.M. Muthuswami, Advocate, SR. 17155
- 2 ccs to Mr.G. Rajeswarar, Advocate, sr. 16651
- 1 cc to Mr.R. Balakrishnan, Advocate, sr. 19696

C.M.A.No.124 OF 2001

SSV (CO)  
kk 12/4